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SUBJ: CANADIAN CHARTER RIGHTS: NOT FOR AFGHAN DETAINEES

¶1. (U) On March 12, Canada's Federal Court ruled that the Canadian Charter of Rights and Freedoms does not apply to individuals whom the Canadian Forces detain in Afghanistan and then transfer to Afghan authorities, nor to the conduct of Canadian Forces in Afghanistan. The Federal Court ruled that the detainees do have rights under the Afghan Constitution and under international law, and in particular international humanitarian law, however. In the House of Commons' Question Period on March 12, Prime Minister Stephen Harper noted that the Court had essentially accepted the government's arguments and commented that "we are obviously very pleased."

¶2. (U) The Court dismissed the application for a judicial review from Amnesty International Canada and the British Columbia Civil Liberties Association, aimed at stopping these transfers due to allegations of torture. The NGOs had cited the Charter's section 7 (right to life, liberty, and security of the person), section 10 (the right to be informed promptly of the reasons for detention, to retain counsel, and to receive a hearing) and section 12 (right not to be subject to cruel and unusual treatment or punishment) as applicable even on this extraterritorial basis due to the involvement of the Canadian Forces.

¶3. (SBU) Comment: The issue of the treatment of detainees has been a political football for at least one year, with recurrent allegations of torture by Afghan prison authorities, Canadian investigations and temporary suspension of transfers between November 2007 and February 2008, and ongoing Canadian efforts to improve monitoring and to train Afghan corrections officials in international norms and standards. The timing is especially fortunate for the government on the eve of the March 13 vote on a government motion to extend Canada's deployment in Afghanistan to 2011, removing one of the few remaining minor differences between the Conservatives and the Liberals on the Afghan mission.

WILKINS